

REMARKS

The Final Office Action mailed 16 December 2003 has been received and reviewed. Claims 1-61 remain pending in the present application. Reconsideration and withdrawal of the rejections are respectfully requested.

Drawings

Replacement drawing sheets 3/5 and 4/5 are submitted with this response. The replacement drawing sheets address the issues raised by the Examiner on page 2 of the Office Action. Namely, reference number "80" now appears in FIG. 8 and reference number "412" now appears in FIG. 14. Applicants submit that no new matter is added.

Approval and entry of these replacement drawing sheets are respectfully requested.

Reservation of Right to Remove Reference

Applicants note that Visintainer (U.S. Patent No. D 454,956) is cited in support of the number of rejections presented in this Office Action. Applicants further note that Visintainer is currently a reference only under 35 U.S.C. § 102(e), but has a filing date less than two weeks before the filing date of the present application. Applicants expressly reserve the right to remove Visintainer as a reference in the future by proving an earlier date of invention.

Allowable Subject Matter

Applicants thank the Examiner for notification to the effect that claim 23 has been allowed, and that claims 13-18, 52, 55, and 58 would be allowable if rewritten in independent form.

Obviousness-Type Double Patenting Rejection

Claims 1-3, 5-7, 12, 24-27, 37-40, 50-51, 53, 54, 56, 57, and 59-61 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being

unpatentable over claims 17, 30, and 51 of co-pending Application No. 09/934,450 in view of Visintainer. Claims 4, 8-11, 28-32, and 41-45 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 17 of co-pending Application No. 09/934,450 in view of Visintainer and Curad. Claims 19-22, 33-36, and 46-49 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 11, 12, 19, and 28 of co-pending Application No. 09/847,942 in view of Visintainer.

In response to the provisional double patenting rejections as set forth in the previous Office Action, Applicants noted that because the only remaining rejections were "provisional" double patenting rejections, they should be withdrawn and a Notice of Allowance should be issued in the present application.

Applicants note that the Examiner has chosen not to withdraw the provisional double patenting rejections. This action is without support and should be reconsidered.

For support of Applicants' position, the Examiner is referred to MPEP Section 804(I)(B) which states as follows:

The "provisional" double patenting rejection should continue to be made by the examiner in each application as long as there are conflicting claims in more than one application unless the "provisional" double patenting rejection is the only rejection remaining in one of the applications. If the "provisional" double patenting rejection in one application is the only rejection remaining in that application, the examiner should then withdraw that rejection and permit the application to issue as a patent, thereby converting the "provisional" double patenting rejection in the other application(s) into a double patenting rejection at the time the one application issues as a patent.

MPEP § 804(I)(B), p. 800-19 (Rev. 1, Feb. 2003) (emphasis added).

As a result, unless the Examiner can show that the pending applications that form the bases for these double patenting rejections have issued as patents, the "provisional" double patenting rejections must be withdrawn in the present application, thus placing the claims subject to those rejections in condition for allowance.

Reconsideration and withdrawal of the "provisional" double patenting rejections are, therefore, respectfully requested.

Summary

It is respectfully submitted that the pending claims 1-61 are in condition for allowance and notification to that effect is respectfully requested. The Examiner is invited to contact Applicants' Representatives, at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted for
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12 MARCH 2004

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CERTIFICATE UNDER 37 CFR §1.10::

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I hereby certify that the Transmittal Letter and the paper(s) and/or fee(s), as described hereinabove, are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR §1.10 on the date indicated above and is addressed to the Commissioner for Patents, Attn: Mail Stop AF, P.O. Box 1450, Alexandria, VA 22313-1450.

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